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Situation of human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, in accordance with Assembly resolutions 66/164 and 68/181 and Human Rights Council resolutions 16/5 and 25/18.

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Report of the Special Rapporteur on the situation of human rights defenders

Summary

The Declaration on Human Rights Defenders, which marks its twentieth anniversary in 2018, recognizes the central role of individuals and groups in society in the realization of human rights. In order to assess the implementation of the Declaration, a global survey covering 140 States has been conducted. The survey reveals three key trends and issues: the evolution of the use of the term "human rights defenders", the development of mechanisms and practices to support them and the relevance of legal and administrative frameworks for their protection. The survey also highlights the role played by various stakeholders vis-à-vis human rights defenders, in particular, regional organizations, businesses and the United Nations system. The report concludes with a reflection on the future of the Declaration and of the situation of human rights defenders.

I. Introduction

1. On 9 December 1998, almost 20 years ago, on the eve of the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights (General Assembly resolution 217 (III) (A)), the General Assembly declared that everyone had the right to promote and to strive for the protection and realization of human rights and fundamental freedoms. In doing so, the States Members of the United Nations recognized both the truth, well-known to the drafters of the Declaration, that human rights existed, above all, in "small places close to home"[1] and the desperate, daily reality of too many people who continued to face the disregard and contempt for human rights that the Assembly sought to banish.

2. The mood was not celebratory, either for the milestone anniversary of the adoption of the Universal Declaration of Human Rights or for the adoption of the new Declaration on Human Rights Defenders (General Assembly resolution 53/144, annex). Rather, historical accounts tell us that the day was cold and spirits were downcast. A group of human rights defenders gathering to mark the adoption of the Declaration on Human Rights Defenders in Paris expressed their disappointment; in the face of widespread human rights violations, the aspirations of the Universal Declaration of Human Rights continued to be unmet. While the new Declaration was viewed by many as only the "absolute minimum" necessary for the defence of human rights, it was nevertheless greeted by a group of 26 States as being in need of immediate qualification and limitation (see A/53/679, annex).

3. Notwithstanding such low spirits at the time of its adoption, the Declaration on Human Rights Defenders, adopted by consensus 20 years ago, has become a milestone document in the human rights project. It recognizes the central role of individuals and groups within society in the realization of the aspirations of the Universal Declaration of Human Rights and the rights enshrined therein. Human rights defenders and civil society more generally are a fundamental pillar of the international human rights system. The Declaration reaffirms a core set of rights required by human rights defenders to hold States to account in respect of their human rights obligations, including the right to defend and promote human rights.

4. However, beyond recognizing the importance of human rights defenders — individuals or groups who act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms through peaceful means — within the international human rights system, the Declaration represents a paradigm shift in the understanding of the human rights project: from a task accomplished mainly through the international community and States to one that belongs to every person and group within society. The Declaration recognizes that the equal justice, equal opportunity and equal dignity without discrimination long sought and deserved by every person can be realized only by empowering individuals and groups to advocate, agitate and take action for human rights. State action, while necessary and required, is insufficient to fully realize the human rights enshrined in the Universal Declaration of Human Rights.

5. In the 20 years since the adoption of the Declaration on Human Rights Defenders, the challenges facing those who defend human rights have not diminished, nor has the irrefutable logic that lies behind the Declaration changed. Although the institutional resources for the promotion and protection of defenders within the United Nations, regional organizations and national systems have grown in the past two decades, they remain insufficient to address the ongoing human rights violations around the globe. The Declaration recognizes that the implementation of the human

[1] Eleanor Roosevelt, "The Great Question", remarks delivered at the United Nations in New York on 27 March 1958.

rights recognized in the Universal Declaration of Human Rights rests primarily upon the involvement and commitment of the people of the world to the cause of human rights. Human rights defenders do not heroically stand in front of or apart from the rest of us; they are each of us and among us, they are ourselves, our parents, our siblings, our neighbours, our friends and colleagues, and our children.

6. The past 20 years have been an era of struggle for human rights. Victories have been hard fought and challenges have proliferated. The celebration of this milestone must be tempered by a recognition of the sacrifices of human rights defenders, their families and their communities. According to United Nations verified data, at least 1,019 human rights defenders, including 127 women, were killed in 61 countries across the world from 2015 to 2017 (E/2018/64, para. 131). While these figures underestimate the magnitude of the violence faced by human rights defenders globally, it is alarming to see that one person was killed every day while standing up for the rights of others during that period. Since the adoption of the Declaration, at least 3,500 human rights defenders have been killed for their role in the struggle for human rights.[2] Countless other human rights defenders have suffered all forms of indignities and abuses. Even human rights defenders who escape human rights violations often face indifference, isolation and inaction from their communities and their Governments.

7. The present report comes at an important moment in the history of the mandate of the Special Rapporteur and of the Declaration; the Special Rapporteur has seized upon this moment to reflect upon the significance of the Declaration on Human Rights Defenders and the accomplishments of all stakeholders, including States and human rights defenders themselves, over the past 20 years (sect. II). Section III of the report presents an overview of the 2018 global survey of the situation of human rights defenders in more than 140 countries and territories and section IV contains a reflection on the evolving role of the mandate of the Special Rapporteur in relation to the situation of human rights defenders. The methodology of the global survey and the activities of the Special Rapporteur are also elaborated upon in these sections. Section V sets out the developments noted in the global survey, drawing attention to the importance of new actors in the protection of human rights defenders, including regional organizations, businesses and the United Nations system itself. The report concludes with a discussion of the future, not just of the Declaration, but also of the global human rights project (sect. VI).

8. Two important documents are linked to this report: a statement of vision for the Declaration and the human rights defender movement over the coming years[3] (an overview of which is provided in sect. VI) and a global survey of the situation of human rights defenders country by country[4] (key findings of which are outlined in sect. III).

[2] This figure is an estimate based on reported killings and likely underestimates the number of human rights defenders killed, especially rural human rights defenders. The data are compiled by an international network of civil society organizations collaborating in the HRD Memorial Project (see www.hrdmemorial.org).

[3] Supplementary information 1: "A vision for the next 20 years", available at www.ohchr.org/Documents/Issues/Defenders/VisionNext20Years.pdf.

[4] Supplementary information 2: "World report on the situation of human rights defenders", available atwww.ohchr.org/Documents/Issues/Defenders/WorldReportSituationHRD.pdf.

II. Significance of the Declaration on the Situation of Human Rights Defenders

9. In 1998, the Declaration on Human Rights Defenders was adopted following prolonged negotiations stretching back almost two decades. The text of the Declaration was drafted, debated and agreed upon in a lengthy series of meetings that brought together a diverse array of States and members of civil society.[5] Civil society, and human rights defenders themselves, drove the negotiations forward through research, advocacy and interventions in the discussions. In a very real sense, the text of the Declaration represents less the beginning of the international community's recognition of human rights defenders, and more a fruit of its evolving understanding and its, at times reluctant, embrace of their role.

10. To be clear, human rights defenders were not born of the Declaration, rather the Declaration was born of the recognition of human rights defenders. The Declaration recognized a new approach to human rights as its founding principle: the centrality of individuals and groups within society to the realization of the human rights project. As such, it represents a paradigm shift away from a top-down, State-centric approach to the realization of human rights.

11. The Declaration was an act of international solidarity by the international community, through which it expressed its concern and support for the important role of human rights defenders in the enjoyment of the human rights recognized in the Universal Declaration of Human Rights. The Special Rapporteur recalls the aspiration in that Declaration to: "the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want". As noted by the previous Special Rapporteur, "the significance of the Declaration on Human Rights Defenders lies in its provision of legitimacy and protection to certain activities that protect and promote universally recognized human rights and fundamental freedoms" (A/66/203, para. 76).

12. The Declaration is an important element of an emerging regime of protection for human rights defenders at risk. Over the past 20 years, all stakeholders have developed a range of laws, policies and practices to better protect human rights defenders, ranging from international and regional mechanisms to national protective laws and national and local networks of human rights defenders. These good practices were the subject of a previous report of the Special Rapporteur (A/HRC/31/55).

13. The Declaration performs an important function as a "declaration on the protection of human rights defenders" despite the resistance of some States. However, it should also be read as a manifesto for the human rights movement, setting out the central role of every person and group within society in the realization of human rights for all. It would do a disservice to the struggle and suffering of human rights defenders at risk to restrict the scope of the Declaration to the protection of human rights and human rights defenders. Rather, the project of the Declaration is their struggle for the dignity, equality and worth of every person and their human rights. The resistance of some States to the protective goal of the Declaration is amplified when it comes to its broader project.

A. Human rights defenders

14. Although the Declaration is commonly referred to as the Declaration on Human Rights Defenders, it is important to recall that the term "human rights defender"

[5] Janika Spannagel, "Declaration on Human Rights Defenders (1998)", *in Quellen zur Geschichte der Menschenrechte* (Arbeitskreis Menschenrechte, 2017).

cannot be found in its text. The rights outlined in the Declaration belong to all human beings, they are the rights of all of us, not the entitlements of a privileged elite or professional class. As recent reports of the Special Rapporteur have underscored, these rights belong to individuals, groups and social movements without distinction, including regardless of whether people choose or are able to register an association or not, their urban or rural location, the State or non-State objects of their advocacy, their particular human rights concern, their nationality or immigration status, or their gender. Everyone is a human rights defender when they take up the human rights project through peaceful means.

15. A human rights defender is any person who, individually or in association with others, acts or seeks to act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional or international levels. Human rights defenders advocate, vindicate, enforce, protect and promote human rights. Actions taken by human rights defenders must be peaceful. Human rights defenders not only identify human rights violations, while drawing the attention of authorities to the consequences of their actions and omissions, but also perform a range of other roles, including assisting States parties in developing public policies to fulfil their obligations. In the more prosaic language of the official title of the Declaration, the rights in the Declaration belong to all "individuals, groups and organs of society".

16. In recent years, we have come to appreciate the diversity of the community of human rights defenders. Beyond the archetypal male civil and political human rights defender in a capital city working for a formally recognized non-governmental organization, there are, and have always been, countless individuals and groups defending human rights. A woman campaigning against corruption, indigenous communities defending their human rights and denouncing the negative impact of extractive or the so-called "development" projects on their rights and the environment, organizations working on social and economic rights, leaders of religious communities resisting extremism, parents seeking recognition and inclusion for their transgender child, a whistle-blower reporting on labour standards violations, a State official prosecuting those who have committed human rights violations, and those suffering from extreme poverty and deprivation fighting the exploitative systems that produce their predicament — all of these individuals and groups are human rights defenders. In recent years, the Special Rapporteur has sought to highlight some of the less visible groups of human rights defenders in his thematic reports, including environmental rights defenders, human rights defenders working with businesses and defenders of people on the move.

17. Inevitably, discussion has occurred among and between human rights defenders about the limits of the term and the activities of human rights defenders. For example, what are the limits on "peaceful means" imposed by the Declaration and international human rights law more generally? Equally, how should we apply the Declaration to individual actors who do not identify themselves as human rights defenders, for example, persons who consider themselves prisoners of conscience or political dissidents, and how can the Declaration be applied to groups, whether they be small and private such as families or large and public such as indigenous communities? As a community of practice develops, it is natural and beneficial that such discussions occur. In that light, the Special Rapporteur will seek in the coming years to develop interpretative guidance for the Declaration based on discussions with and the understandings of all stakeholders, including human rights defenders themselves.

B. Rights of human rights defenders

18. The focus of the Declaration is on the act of promoting and defending human rights and reaffirming the core human rights most needed by those who defend human rights. These human rights are set out in international and regional human rights treaties and form part of customary international law. As mapped in an earlier report of the Special Rapporteur to the General Assembly in 2011, there are nine key rights that are articulated in the Declaration: the right to be protected; the right to freedom of assembly; the right to freedom of association; the right to access and communicate with international bodies; the right to freedom of opinion and expression; the right to protest; the right to develop and discuss new human rights ideas; the right to a remedy; and the right to access funding (A/66/203). Importantly, the Declaration establishes no new rights, but rather articulates and restates human rights that are already enshrined in legally binding instruments.

19. The foregoing rights are instrumental to the defence of human rights. The implementation of these rights is a prerequisite for the creation of a safe and enabling environment for human rights defenders in which they can carry out their work. The Special Rapporteur calls particular attention to three of these rights in the context of the current challenges facing human rights defenders: the right to be protected; the right to develop and discuss new human rights ideas; and the right to access funding.

20. First, the right to be protected requires States both to refrain from violating the human rights of defenders and to act with due diligence to prevent, investigate and punish any violation of rights. The widespread impunity enjoyed by violators of the rights of defenders and the overlapping inaction and inability of States to tackle violations of the rights of human rights defenders committed by non-State actors, including notably, business actors (often with the complicity of States), are key challenges facing the realization of this right today. Although the Declaration has given rise to a human rights defender protection regime, State and civil society programming too often mitigates the effects of a failure to protect, rather than more actively addressing the root causes of violations and ensuring adequate preventative measures. The right to be protected, like the other rights enshrined in the Declaration, applies without discrimination.

21. Second, all individuals are entitled to freedom of expression and opinion. The Declaration also protects the right to develop and discuss new human rights ideas, allowing all people to be part of the progressive development of human rights ideas and to be actively engaged in setting new directions for the human rights project. This right recognizes that some of these new ideas may be culturally, religiously or politically controversial; it is precisely this potential for controversy that demands space for free and open discussion and debate. In recent years, human rights defenders seeking further discussion on sexual orientation and gender identity have faced repression in violation of this right.

22. Third, the right to access funding has been deeply affected by the misuse of global campaigns against money-laundering and terrorism as well as national efforts to curtail "foreign interference". In particular, this right protects the ability of defenders to raise funds internationally and underscores that even legitimate aims of the State cannot be used as pretexts to silence or reduce the activities of human rights defenders. The heightened penalties in Egypt's new law on non-governmental organizations (Law No. 70 of 2017), the discriminatory approach to "transparency" adopted in Israel and the Russian Federation in respect of the disclosure of civil society funding, and bureaucratic processes that effectively restrict access to foreign funding in India are examples of spreading bad practices that infringe upon the right to access funding. Ironically, in an age where the financial capital of transnational

corporations and international investments benefits from reduced barriers, human rights defenders increasingly face politically motivated restrictions in their access to funding. Troublingly, the approach of hiding restrictions on the right to access funding behind security and law enforcement rationales is being used as a model for restrictions on other rights; a wave of "cybercrime" legislation in countries ranging from Viet Nam to Egypt uses similar pretexts to restrict the freedom of opinion and expression of defenders.

23. As with all human rights, the rights within the Declaration are owed to all individuals without discrimination on any ground, including gender, disability, race, ethnicity, language, religion, political or other opinion, nationality or class. The prohibition of discrimination also extends to sexual orientation and gender identity.[6] Defenders working on the human rights of marginalized groups or on socially or culturally sensitive topics too often face discrimination on the part of agents of the State and, unfortunately, within society and even civil society. This is particularly true when human rights defenders themselves are from marginalized groups. The discrimination against women human rights defenders is emblematic of this problem. Recent reports of the Special Rapporteur have also highlighted the discrimination faced by defenders of people on the move who may be refugees or migrants themselves and by indigenous peoples and rural communities opposing large-scale, extractive or development projects.

24. The rights outlined in the Declaration are subject only to limitations that are prescribed by law. Any limitations must be reasonable, necessary and proportionate. Such limitations must be solely for the purpose of securing due recognition and respect for the human rights and fundamental freedoms of others and meeting the requirements of public order and general welfare in a democratic society. Even where some rights or freedoms are restricted in a situation of emergency or to protect public order, the right to associate, advocate and protest in relation to the restrictions, in effect to monitor and debate the restrictions, can neither be restricted nor suspended. Restrictions on the right to defend human rights must be held to a very high standard; in times of great peril, the need for a robust civil society and independent voices, for independent monitoring and accounting, is even greater.

25. At the core of the Declaration's enumerated rights is the legitimacy of each of our individual and collective rights to participate in the human rights project. The Declaration makes human rights violations faced by any individual the concern of all of us; we each have a vested interest in the protection of human rights and have the right to participate in their discussion and promotion, in their monitoring and advocacy, and in ensuring their implementation. The Declaration reminds us that the human rights obligations of States are *erga omnes* in the broadest possible sense of the term: not just owed by a State to the right holder, nor only owed to the international community, but owed to us all by virtue of our shared humanity. As the then Secretary General Kofi Annan noted a few months before the adoption of the Declaration: "When the rights of human rights defenders are violated, all of our rights are put in jeopardy and all of us are made less safe."

C. Other obligations of States

26. The Declaration does not simply set out the rights of those who defend human rights. It also sets out some of the steps that States must take in implementing those rights. In the first 20 years of the Declaration, these other obligations contained in the

[6] A/HRC/35/36, paras. 21-22. See also general comment No. 22 of the Committee on Economic, Social and Cultural Rights (E/C.12/GC/22, para. 23); general comment No. 35 of the Human Rights Committee (CCPR/C/GC/35, para. 3); *Young v. Australia* (2003) and *X v. Colombia* (2007).

Declaration have been overshadowed by the important discussion of and attention to violations of the rights of defenders. However, the path forward must be based upon renewed attention to these other obligations.

27. The first and foremost of these obligations is the requirement that a State create what has been termed a "safe and enabling environment" for human rights defenders. As noted in the Declaration, each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. With respect to human rights defenders, this obligation includes establishing a legal, institutional and administrative framework conducive to the activities of human rights defenders. The development of national legislation on human rights defenders, national protective mechanisms for human rights defenders at risk and best practices that promote and protect the rights to freedom of peaceful assembly and of association are all examples of initiatives seeking to realize this obligation. Similarly, many States have developed national guidelines and action plans on human rights defenders that seek to holistically address the State's responsibility to human rights defenders both within and outside its borders.

28. In addition, under the Declaration, States have an obligation to promote and facilitate human rights education. This obligation is particularly important in relation to State officials involved in the protection of human rights defenders, including lawyers, law enforcement officers, armed forces personnel and public officials. Human rights education includes public statements and support of public discourses about human rights defenders that recognize them as legitimate and important voices within society. As noted in the report of the Special Rapporteur on good practices, rights education can lead not only to a better understanding of a State's human rights obligations, but can also serve as a vehicle for understanding "the relationships that undergird the discourses and actions of human rights violators, human rights protectors, and human rights victims" (A/HRC/31/55, para. 81). The involvement of human rights defenders in human rights training programmes is important insofar that it can legitimize their role and activities and provides an opportunity for constructive dialogue.

III. Global survey of the situation of human rights defenders

29. Marking the end of her mandate and the first years of the Declaration, the Special Representative of the Secretary-General on human rights defenders conducted a global survey on the situation of human rights defenders in 2006 (see E/CN.4/2006/95/Add.5). The goal of the survey was to identify "the main areas of progress and the remaining challenges that need to be addressed in relation to the implementation of the Declaration". It has served, as intended, as a basis for action for her successors. However, as already noted in the present report, much has changed since the report of the Special Representative and it is appropriate on the twentieth anniversary of the Declaration to again seek a "comprehensive assessment of the situation for human rights defenders and the implementation of the Declaration on a global scale".

30. The current global survey seeks to update the first global survey and to capture the current situation of human rights defenders in more than 140 States Members of the United Nations and other territories. The global survey can be read both as an update on the particular situation of human rights defenders in each country or territory and as a global review of their shared situation, including recent trends and current widespread challenges. The development of the global survey has been supported by a team of close to 50 researchers from around the world and is based upon a range of data sources, including direct input from States, international and

regional organizations, national human rights institutions, civil society and human rights defenders themselves. Seeking to do more than simply update the initial survey, the global survey broadens the scope of its predecessor in terms of analysis, moving beyond the legal framework of the International Covenant on Civil and Political Rights and focusing instead on the rights enumerated in the Declaration. It also expands the scope of the survey both in terms of the number of States and other territories under review and in terms of the amount of data considered in its production.

31. First, the global survey draws on responses to questionnaires sent to States, international organizations, civil society organizations and a wide range of other stakeholders during the first half of 2018 on the implementation of the Declaration and the situation of human rights defenders; questionnaires were also posted on the website of the Special Rapporteur and distributed by social media. More than 150 responses were received from an international array of stakeholders. Second, the global survey draws on the documentary material on human rights defenders generated by States and national human rights institutions, by the processes of the United Nations and by civil society. Third, the country entries in the global survey draw upon the activities and expertise of the Special Rapporteur, in the form of country visits, communications and dialogues with the human rights defender community.

32. Importantly, wherever possible, the Special Rapporteur has sought to supplement the information from such reports with accounts from and about individual human rights defenders, in order to give a finer-grained, more tangible sense of the situation of actual human rights defenders in the States under review.

33. In relation to current widespread challenges, the global survey reveals the following three key issues facing human rights defenders globally: the evolution of the use of the term "human rights defenders"; the development of mechanisms and practices to support human rights defenders; and the use of legal and administrative frameworks to both protect and persecute defenders. Each of these are addressed below.

A. Evolution of the use of the term "human rights defenders"

34. First, the discussion of the situation of human rights defenders and the rise in the usage of the term has increased dramatically over the past 20 years. The country entries reveal a much wider set of individuals and groups identifying themselves as human rights defenders, using the term "defenders" and engaged in the challenges of defending human rights. For instance, the adoption by consensus of the landmark General Assembly resolution recognizing the situation of women human rights defenders in 2013 (resolution 68/181) is indicative of the broadening of the community. Despite this evolution, many human rights defenders remain unaware of or are unwilling to use the term (and the Declaration) until a situation of risk requires them to interact with the emerging human rights defender protective regime. The rights are expressed individualistically, with little explicit attention to social or community rights. Difficulties in applying the term to communities, collectives and networks are more than pedantic.

35. Unfortunately, not all of the discourse about human rights defenders has been positive or even productive. With the rise in the use of the term "human rights defenders" has come a "battle for narratives that generates an environment in which civil society is viewed with distrust and its demands are not seen as universal, but as

claims based on privilege and favour".[7] Many country entries reveal troubling attacks on human rights defenders, whether the attacks are on all of them or on those engaged in specific issues, by the State, the media and powerful interests. Negative depictions in popular culture, even in such mundane productions as local soap operas or on radio and television call-in shows, have an insidious effect on the safety of defenders in already precarious situations. In otherwise safe and enabling societies, particular types of defenders can be singled out for vilification as evidenced by the anti-media rhetoric in the United States of America. Even children have reported fearing harassment and other more serious mistreatment if they speak up. Beyond countering such negative narratives of human rights defenders, the challenge is to create diverse, positive, role-affirming accounts of the defence of human rights.

36. We must recall that the Declaration not only obligates States to protect the rights of defenders and prevent violations of their rights but also to promote those rights. In addition, the Declaration imposes independent obligations on States to adopt appropriate administrative and legal frameworks to support the defence of human rights and to educate State officials and the public at large about their rights. As has been noted in many of the country entries, State officials are increasingly critical of human rights defenders. While actions and opinions should be open to free and open debate, too often the discussion of human rights defenders inappropriately questions their legitimacy and seeks to create a hostile, dangerous environment for their work. In such officially sanctioned discourses, defenders are portrayed as disconnected elites, dishonest or uninformed troublemakers, and foreign agents.

37. Even where State officials do not condemn human rights defenders, they are often silent in the face of criticisms of defenders by powerful social, political and economic interests. This silence can contribute to an environment of impunity for those who violate the rights of defenders. Such vitriol is a key element, both as cause and effect, of the closing civic space that has become widespread over the past two decades. It is necessary that States proactively express support for the defence of human rights and the rights of human rights defenders. Provisions in national legislation on human rights defenders, such as Mexico's Law for the Protection of Human Rights Defenders and Journalists, requiring key agents within the State to publicly support human rights defenders not only provide an important counter to existing dangerous discourses but also a path forward towards the prevention of future violations and the promotion of the right to defend human rights more generally. National and regional guidelines on the defence of human rights defenders must also not only address solidarity with and support for human rights defenders abroad but also strengthen the position of human rights defenders locally.

B. Development of mechanisms and practices to support human rights defenders

38. Second, over the past 20 years, a range of innovative practices to support human rights defenders have been developed and have spread. Civil society has led the way in the development of such practices. Country entries report on the creation of regional, national and local networks of support for human rights defenders, the expansion of programmes of protection, such as temporary relocation initiatives, and the development of international civil society organizations, networks and funding mechanisms to support particularly vulnerable human rights defenders. States have introduced national legislative frameworks to protect human rights defenders and created national protective mechanisms to institutionalize those frameworks. States

[7] Ana Cernov, "Civil Society is not the Enemy", *Sur: International Journal on Human Rights*, vol. 14, No. 26 (2017), p. 55.

and regional and international organizations have also implemented policy guidelines on the treatment of human rights defenders, helping to realize the premise of the Declaration and the mandate of the Special Rapporteur that we share a collective concern for the situation of human rights defenders everywhere.

39. While the emergence of a protection regime for human rights defenders at risk is a positive development, the focus on security can too often sideline the broader well-being of human rights defenders and their families and communities. Reading between the lines of the individual cases and violations mentioned in numerous country entries, a broader and yet more troubling account of the ongoing human rights violations around the world emerges. Tactics such as self-care and deliberate invisibility are necessarily absent from mention in the entries; however, they play an important role in the response to threats and risk.

40. Regional organizations emerge as key players in the protection of human rights defenders. Despite their important role, many of their initiatives continue to suffer from significant resource constraints. While there are examples of supportive and collaborative relationships between human rights defenders and business, there are also concerns about the negative impact of business interests and practices on human rights defenders.

41. Bad practices have also expanded to the over-regulation of non-governmental organizations, limitations on the advocacy conducted by human rights defenders, reprisals against them and restrictions on the receipt of international funding.

C. Legal and administrative frameworks to support and persecute human rights defenders

42. The Declaration recognizes the importance of legal and administrative frameworks in the creation of safe and enabling environments for human rights defenders. Despite the obligation on States to introduce such frameworks and the numerous national legislative initiatives, and the law reforms and national policy guidelines reflected in the entries received, law and policy are also being used, unwittingly and deliberately, to frustrate the defence of human rights. Country entries reveal the use of administrative procedures and local by-laws to close human rights organizations, the prosecution of human rights defenders for fictitious tax and other offences and the criminalization of dissent through prosecution on various grounds, including for "defamation of the nation". Defenders such as Hassan Bouras in Algeria face decades-long investigations and shifting prosecutions for a range of offences related to their criticism of the State. Other human rights defenders in the Philippines face prosecution through the use of generic boilerplate prosecutions without individualized charges. It is regrettable that the law and legal processes have become both a shield for and a sword used against human rights defenders.

43. One of the consequences of this "lawfare" over human rights defenders is the position of the legal and judicial professions, both as potential guardians of the right to defend human rights and as persecutors of human rights defenders. Lawyers and members of their families are at particular risk when they take up the cases of human rights defenders or otherwise seek to promote the right to defend human rights. The country entry of China in the global survey is a particularly troubling example of this trend, although not the only such entry. Other professions ranging from educators to health professionals have also faced threats as a result of their pursuit of their professional ideals in support of human rights defenders. Professional regulatory bodies and training schools must adapt their practices to respond to these new threats.

IV. Mandate of the Special Rapporteur

44. The mandate of the Special Rapporteur arose from the deep concern of the international community about the situation of human rights defenders and that "in many countries, persons and organizations engaged in promoting and defending human rights and fundamental freedoms are often subjected to threats, harassment, insecurity, arbitrary detention and extrajudicial executions". This concern was first expressed in the resolution establishing the Special Representative of the Secretary-General on the situation of human rights defenders (which became, in 2008, the Special Rapporteur on the situation of human rights defenders) and has been echoed in every resolution continuing this mandate. The core function of the mandate holder is to engage in constructive dialogue with all members of the international community, including with human rights defenders themselves, with a view to addressing the persecution and insecurity suffered by too many human rights defenders. The mandate has served as a voice for human rights defenders within the United Nations system.

45. The mandate of the Special Rapporteur has developed alongside the Declaration. Over the course of almost two decades, various Special Rapporteurs have drawn the attention of the international community to the situation of human rights defenders through reports on thematic issues, including groups of human rights defenders, on communications with States and other stakeholders about the situation of particular defenders and on country visits. The reports of the Special Rapporteur have drawn attention to the situation of women human rights defenders and other defenders facing particular challenges. They have highlighted the particular importance of considering pressing issues through the lens of human rights defenders. The reports show how refocusing discussions on human rights defenders can reveal pathways to sustainable, effective, meaningful response to these global challenges. Since the beginning of the mandate, the thematic reports of the Special Rapporteurs have, among other accomplishments, contributed to the elaboration of the content of the Declaration, provided a framework for a safe and enabling environment for human rights defenders and their work (A/HRC/25/55) and articulated and collected examples of the seven principles that underpin good practices by States in the protection of human rights defenders (A/HRC/31/55).

46. The role of the Special Rapporteur has become increasingly demanding. Since the previous global survey, the various Special Rapporteurs on the situation of human rights defenders have conducted country visits to more than 20 States and received communications concerning more than 13,000 cases. The handling of these communications alone represents a significant activity of the Special Rapporteur and is often conducted in coordination with other special procedures mandate holders. A recent survey[5] of human rights defenders involved in communications with the Special Rapporteur indicated that more than half of them were confident that the involvement of the Special Rapporteur had contributed to an improvement of their situation. Improvements in the situation of human rights defenders who are the subject of communications were particularly striking for those facing mistreatment by the State within the justice system, including complaints concerning unfair trials and arbitrary detention. However, a minority of human rights defenders also reported that communicating with the Special Rapporteur had contributed to a worsening of their situation. Following on earlier comments about fostering an effective, supportive relationship between the United Nations system and human rights defenders, the Special Rapporteur is committed to listening to all stakeholders about how to ensure that the communications process is effective and address any negative consequences that arise from interactions between the Special Rapporteur and human rights defenders at risk.

47. The Special Rapporteur has sought to respond to demands from human rights defenders, including in innovative ways, and has developed new activities to respond to changing circumstances. The Special Rapporteur has prioritized meeting with human rights defenders around the world, formally, as part of structured consultations on his reports and activities, and informally. These encounters and commitment to listening to their voice and plights both ensure the accuracy and currency of his interventions and express his support for and solidarity with their struggles. The Special Rapporteur has conducted a growing number of "academic visits" and other informal visits to States around the world with a view to providing technical support to States and to engaging with the public, members of academia, and local human rights defenders. He works closely to support a number of national human rights institutions in their development of programming on human rights defenders and has also sought to use his mandate to disseminate information, developing publicly accessible versions of his reports and using his profile on social media to publicize key developments.

V. Broadening the discussion about human rights defenders

48. As the global survey makes clear, any serious consideration of the situation of human rights defenders must examine not simply the roles of States and human rights defenders but also the roles of all stakeholders, including increasingly important actors such as regional organizations, businesses and the United Nations.

A. Regional organizations

49. Regional organizations are playing a prominent role in the protection of human rights defenders. The coming year marks the fifteenth anniversary of the European Union Guidelines on Human Rights Defenders adopted in 2004 and revised in 2008, which have informed important changes in practices by overseas diplomatic representatives of the European Union. The Organization for Security and Cooperation in Europe and the Council of Europe have a long-standing engagement with the protection of human rights defenders, predating the adoption of the Declaration. The Organization of American States has created a rapporteurship on human rights defenders and the precautionary and provisional measures issued by its human rights institutions are an important protective mechanism for human rights defenders at risk. Similarly, the African Commission on Human and Peoples' Rights of the African Union created the position of Special Rapporteur on the situation of human rights defenders in 2004 and has developed, with human rights defenders themselves, important guidelines on freedom of association and assembly.

50. Within other regional organizations, human rights defenders have struggled to be recognized. The institutions of the Association of Southeast Asian Nations (ASEAN) have been particularly hostile to the participation of human rights defenders and to addressing their situation in the region despite its commitment to a "people-oriented ASEAN". However, while the ASEAN Intergovernmental Commission on Human Rights has been less visibly active on the situation of human rights defenders, it has nonetheless supported important initiatives aimed at increasing the participation of environmental human rights defenders, sharing good practice on business and human rights and facilitating the application of international human rights law in local courts. Hopefully, in the coming years, the Intergovernmental Commission will more explicitly engage with the very difficult situation of human rights defenders in the region. The Special Rapporteur expresses his willingness to work with regional bodies to facilitate the sharing of expertise and good practice between them. Regional

organizations represent important forums to discuss and respond to the particular challenges faced by human rights defenders within the region.

B. Business and human rights

51. As noted in the recent report of the Special Rapporteur on the subject, businesses have become an increasingly important actor in relation to human rights defenders (A/72/170). For defending human rights from the negative impact linked to business activities, ordinary people, communities, workers and trade unionists face stigmatization, criminalization, physical attacks and sometimes death. Business agendas and so-called development plans or projects are often intertwined with powerful economic, social and political interests that may seriously undermine the human rights of those already discriminated against and the prospects for sustainable development. Human rights defenders denouncing and opposing such practices are faced with serious threats, violence and other violations of their rights. The increasingly transnational nature of business enterprise makes the treatment of human rights defenders by business an international problem; businesses are often controlled and headquartered abroad and export their outputs to a wide range of markets. However, the increasingly international nature of business also provides avenues for the promotion of good practice in relation to human rights defenders, including through the linkage of trade and development allowances and the regulation of investments to the existence of a safe and enabling environment for defenders.

52. While States continue to be primary duty bearers, non-State actors such as businesses have the responsibility to promote and respect the rights of defenders. The Declaration prohibits the active or passive participation in human rights violations also by non-State actors. The Guiding Principles on Business and Human Rights reiterate three complementary duties: of States, to protect citizens from human rights abuses by third parties; of business, to respect human rights; and of all, to facilitate greater access for victims of business-related abuse to effective remedy.

53. It is important to focus particular attention on the relationship between business and human rights defenders on this important anniversary for a number of reasons. First, business interests continue to drive the world towards increasing globalization and marketization. States face a growing regulatory challenge in relation to governing increasingly powerful business interests; the challenge of ensuring the support of businesses to the important role of human rights defenders and respect for the human rights of all will only become both more difficult and more important in coming years. Second, the recognition of the importance of business actors by the international community is part of a wider trend towards recognizing the important role of non-State actors. In coming years, we will need to more explicitly grapple with the relationship of human rights defenders to a long list of non-State actors, including the media, religious leaders and non-State armed groups. The successes and failures in engaging with business interests will be an important factor in the negotiation of these relationships.

C. United Nations system

54. Human rights defenders, as an important part of civil society, have long been key actors in the international human rights system. It is often forgotten that the representatives of civil society far outnumbered State representatives at the founding of the United Nations and that since its earliest days, the United Nations has recognized civil society as an important means for ensuring that the interests of the peoples of the United Nations are fulfilled. As recognized by the Secretary-General,

the work of the Human Rights Council and other bodies of the United Nations is strengthened by engagement with civil society (see Human Rights Council resolution 32/31).

55. Human rights defenders play a crucial role within the United Nations human rights system. As noted by the recent joint statement by a group of chairs, vice-chairs and members of United Nations human rights treaty bodies, the international human rights system relies upon human rights defenders "being able to act freely and without any interference, intimidation, abuse, threat, violence, reprisal or undue restriction."[8] Human rights defenders assist States parties in the realization of their human rights obligations and are themselves rights holders, entitled to discuss their situation and seek remedies in international forums.

56. In recent years, human rights defenders have faced reprisals because of their participation in and promotion of discussions concerning human rights within the United Nations system. The Human Rights Council has condemned all acts of intimidation and reprisal committed by Governments and non-State actors and the Presidents of the Human Rights Council have used their good office to address allegations of intimidation and reprisal experienced by those engaging with the Council. Recently, the Secretary-General appointed the Assistant Secretary-General for Human Rights to lead the efforts within the United Nations system to address reprisals against those cooperating with the Organization on human rights issues. While these developments are welcome, reprisals continue and are of grave concern (see A/HRC/36/31). In the past two years, human rights defenders have faced disbarment, refusal of exit permits, travel bans, assault, threats against their families, intimidation, arrest and torture, enforced disappearance, exile and death also in relation to their cooperation with the United Nations on human rights. Even within United Nations human rights forums, Member States have silenced human rights defenders by raising unfounded security concerns about their participation, attempting to deregister non-governmental organizations associated with dissident voices, prohibiting State agents from cooperating with special procedures and otherwise reducing and objecting to the participation of human rights defenders in discussions. The safe and enabling environment we seek to create for human rights defenders must extend to the international human rights system itself.

57. The agencies and offices of the United Nations system must also do more to welcome human rights defenders into their deliberations; human rights defenders of all types should be invited into the discussions and debates within the agencies and offices of the United Nations system. Participation in consultative forums should not needlessly exclude human rights defenders who have been unable, because of restrictive State policies, to register their associations or obtain travel clearances. Operational and field offices of the United Nations system have often supported the operations of international civil society organizations through co-location and other forms of support; more consideration should be given to the support of local civil society organizations, including human rights defenders who assist the United Nations in the performance of its mission. The United Nations system must be mindful of not inadvertently reproducing the restrictive practices of some States.

58. Within the United Nations system, the Special Rapporteur has also, in previous reports, called for the strengthening of its support for human rights defenders. The Special Rapporteur encourages the sharing of good local practices such as those adopted by the United Nations Entity for Gender Equality and the Empowerment of Women to train and support "young women leaders" and to encourage participation

[8] Twentieth anniversary of the Declaration on Human Rights Defenders: Joint statement by a group of chairs, vice-chairs and members of the United Nations human rights treaty bodies and the Special Rapporteur on the situation of human rights defenders (June 2018).

by human rights defenders in its various country and regional planning forums. The situation of human rights defenders should be actively strengthened through the operations of the United Nations. Particularly because its operational role is so often in difficult environments, the United Nations must demonstrate good practice in the support of human rights defenders, including by recognizing the legitimacy of human rights defenders and their defence of human rights. However, work needs to be done to follow up on some of the specific recommendations of the Special Rapporteur in previous reports.

59. In addressing the challenges facing the world, whether it be sustainable development, climate change, forced displacement and mass migration, or countless other issues of international importance, the participation and involvement of civil society generally, and human rights defenders specifically, is vital for the success of these initiatives. The advocacy of human rights defenders has clearly contributed to the international consensus on these issues. They have exposed the labour exploitation of globalized supply chains, revealed the environmental plunder of areas of unique fauna and flora and rescued people on the move from perilous situations on the high seas. Looking to the future, the agreements, compacts and action plans of the international community addressing these issues will not be successful without the continuing work of human rights defenders in monitoring and evaluating their implementation, developing and advocating for better practices and vernacularizing the international consensus reached in the various forums of the United Nations.

VI. The next 20 years

60. The current anniversary of the Declaration is an opportunity not only to review the situation of human rights defenders, the progress made and challenges faced since the adoption of the Declaration, but also to set out a vision for the coming years. Imagining the next 20 years is not the task of a single individual, group or organization but rather a collective one for all stakeholders, including human rights defenders. In order to facilitate the development of a collective vision, the Special Rapporteur will be participating in a number of workshops, events and dialogues during the twentieth anniversary year. Notably, human rights defenders, civil society organizations, States and international organizations will meet in Paris in the autumn of 2018, within the framework of the second Human Rights Defenders World Summit. The Summit will provide an opportunity to reflect on the main achievements and challenges since the adoption of the Declaration and will support the recognition of the important role of defenders in promoting and defending human rights in the world. Importantly, a high-level dialogue will be held in New York by States Members of the United Nations. Some preliminary reflections about the project for the coming years are elaborated in the statement of vision for the Declaration on Human Rights Defenders referred to in paragraph 8 above. Considering the journey ahead, there are three key issues that, in the view of the Special Rapporteur, need to be part of the global conversation about the future of human rights defenders and the Declaration. These issues can, for the sake of simplicity, be articulated as questions: Who is a human rights defender? What is the Declaration on Human Rights Defenders? What is the relationship between human rights defenders and the State?

61. First, any vision for the future must seek to further clarify the definition of a human rights defender and related questions, such as the non-violence clause. As noted previously, this definition is absent from the Declaration and has been given a broad interpretation by the community of practice. However, beyond this formally broad definition, certain types of human rights defenders have been privileged. Inevitably, the membership of the community of practice is an important determinant of the issues that are identified as important and in need of international attention.

How can the community of practice expand in scope to include defenders who have previously been passively overlooked or actively excluded?

62. Further, having touched upon the challenge of incorporating groups and communities into the implementation of the Declaration, how can our understanding of the term also embrace the "groups and organs of society" contemplated in the title of the Declaration? The community of practice has grown phenomenally over the past 20 years, with new groups of practitioners joining and new generations of defenders expanding the numbers of those that campaigned for the Declaration. However, many individuals who take up the defence of human rights today are unaware of the Declaration and the term "human rights defender" or are unwilling to take on its mantle, whether it be out of fear of reprisals or their inability to recognize their role as one that deserves the label. New social movements have produced social and political revolutions in the past 20 years and yet these movements often have an uncomfortable relationship with the mainstream human rights movement, using the language of social justice rather than that of the defence of human rights. Children, the elderly, persons with disabilities and other marginalized groups continue to face barriers as defenders of human rights. It is imperative to seek ways to bring the perceptions and concerns of such individuals and groups into the discussion of the future of the human rights defender community.

63. Second, any vision must address the significance and role of the Declaration. Although it is appropriately at the centre of this year's celebrations, what will be the future of the Declaration? This question is asked by a friend of the Declaration and an ally of human rights defenders. However, as noted previously, key elements of the Declaration are without definition or have been the source of debate within the human rights defender community. What processes and forums can be used in any such elaboration?

64. Historically, the vision of the negotiators of the Declaration was that it would serve as a milestone in the struggle for human rights — a precursor to a binding international treaty protecting human rights defenders. Such a vision has been described as naïve in the light of the risks, threats, attacks and violations faced by human rights defenders since the adoption of the Declaration and unambitious in the light of the existing binding legal status of the rights and obligations in the Declaration.

65. Third, a key issue that emerged in the negotiation of the Declaration was the relationship of defenders with States and other non-State actors. The situation of human rights defenders is no longer, or perhaps never was, determined exclusively by the actions and policies of the State. Moving beyond the relationship between rights holders and the State, the Declaration raises a number of questions about the obligations owed by human rights defenders to each other and to the peoples of their societies. Without reverting to the unhelpful discourse of human rights defenders' obligations to the State that needlessly prolonged the negotiation of the Declaration, the coming years must see further elaboration of an ethics of human rights practice. The above-mentioned discussions of the limits of the community of human rights defenders also raise debates about the possibility of State agents, including civil servants, judges and police officers, being human rights defenders, echoing earlier principled and pragmatic debates about the independence from the State of national human rights institutions.

VII. Conclusion and recommendations

66. In the face of great adversity, human rights defenders persist in striving for the protection and realization of human rights and fundamental freedoms. Their tenacity is reflected in the words of Bertita Cáceres, daughter of a murdered woman human rights defender, explaining the continuation of her own struggle: "I was born into a people of great dignity and of great strength. And my mother, Berta Cáceres, instilled upon us, from a very young age, that the struggle is rooted in dignity and that we must continue forward defending the rights of our people."

67. It is with such acts of courage in mind that the Declaration on Human Rights Defenders celebrates its twentieth anniversary alongside the seventieth anniversary of the Universal Declaration of Human Rights. The Declaration on Human Rights Defenders represents the deliberate and considered recognition by the international community of the fundamental importance of individuals, groups and organs of society in the realization of the ambitions of its much older predecessor. Just as the drafters of the Universal Declaration of Human Rights would be disappointed by the violations of human rights and affronts to dignity that continue today, so too would those many contributors to the text of the Declaration on Human Rights Defenders be disappointed by the ongoing indifference, contempt, officiousness and violence faced by human rights defenders in many parts of the world two decades on.

68. The global survey reveals that the discourses surrounding human rights defenders often exacerbate the risks they face. However, since the previous global survey, there has been a marked elaboration of the protection regime for human rights defenders at the local, national and international levels. While civil society and States have developed new programmes of protection, new actors in protection such as regional organizations have also emerged. Some progress has been made in fulfilling the obligation to create appropriate legal and administrative frameworks for human rights defenders, but those frameworks are too often used to persecute rather than support human rights defenders.

69. As with the moment of the adoption of the Declaration, our mood on this anniversary must be toughened by the continuing struggles of defenders in many parts of the world. Even while the community of human rights defenders has broadened its scope and strengthened its practice, the violations, abuse and indignities suffered by human rights defenders point to the challenges hindering the full realization of human rights and the implementation of both the Universal Declaration of Human Rights and the Declaration on Human Rights Defenders itself. The international community, including all States Members of the United Nations, bears responsibility for the collective failure to fully respect the inherent dignity and the equal and inalienable rights of all peoples of the world.

70. A renewed commitment to the Declaration on Human Rights Defenders presents the best pathway towards the realization of the human rights and freedoms enshrined in the Declaration. The struggles of human rights defenders are not without hope. In the spirit of the diverse, transnational and intergenerational social movement that is the human rights defender community, it is apt to close with a saying adopted by various groups in their struggle, from youth and student human rights defenders in Mexico to sexual orientation and gender identity activists in Greece: "Nos enterraron sin saber que también somos semillas." (They buried us not knowing that we are also seeds.)

71. The Special Rapporteur recommends that all stakeholders engaged in the protection of human rights defenders:

(a) Mark the twentieth anniversary of the Declaration on Human Rights Defenders by publicly recommitting to the rights and obligations contained in the Declaration;

(b) Ensure that their policies and/or practices fully recognize the important role of human rights defenders as important contributors to State and non-State processes and as rights holders crucial to the realization of human rights;

(c) Encourage and value the genuine, free and full participation of the broad and diverse community of human rights defenders in the development of programming, policies and practice relevant to their human rights work.

72. The Special Rapporteur recommends that States:

Adopt necessary legislative and administrative measures, including good practices noted by the Special Rapporteur (see A/HRC/31/55), to ensure that human rights defenders enjoy a safe and enabling environment, including through the introduction of guidelines on human rights defenders, the creation of national protective and coordination mechanisms and legislation formally guaranteeing the rights in the Declaration.

73. The Special Rapporteur recommends that the institutions and processes of the United Nations system:

(a) Take steps to widen the participation of human rights defenders in the discussions of the United Nations, ensuring through continued vigilance that human rights defenders are able to participate in United Nations processes without fear of reprisal;

(b) Reform policies and practices to ensure that the institutions and processes of the United Nations, in their relationship to human rights defenders, serve as a model for States and other stakeholders in addressing the protection needs of defenders, especially in difficult environments and for defenders facing heightened risk or vulnerability and by taking action on the Special Rapporteur's recommendations to the United Nations system contained in previous reports.

74. The Special Rapporteur recommends that regional organizations:

Commit to the further development, adequate resourcing and sharing of good practices within such organizations to address the situation of human rights defenders.

75. The Special Rapporteur recommends that civil society and human rights defenders:

(a) Develop and participate in programmes of action, discussion and education to mark the twentieth anniversary of the Declaration on Human Rights Defenders;

(b) Broaden and deepen their community of practice, including by bringing new actors such as professional associations into the discussion of human rights defenders at risk and by being inclusive of previously marginalized and new human rights defenders, by recognizing groups and collectives defending human rights and by taking and instigating opportunities for sharing knowledge and effective practices among different parts of the community.